

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ANTHONY ROMANO,

Plaintiff,

16-CV-081-A  
**DECISION AND ORDER**

v.

LISA LISSON, in her official and individual capacities;  
KAREN CROWLY, Deputy Superintendent, in her official and individual capacities;  
THERESA CAMPBELL, in her official and individual capacities;  
SCARVANI, in their official and individual capacities;  
C.O. EVERTT, in their official and individual capacities;  
CHIEF STIRK, in their official and individual capacities;  
CAPTAIN SCARELLI, in their official and individual capacities;  
SERGEANT STEVEN A. BLASK, in his official and individual capacities;  
SERGEANT HAYES, in their official and individual capacities; and  
JOHN B. LEMPKE, SUPERINTENDENT, in his official and individual capacities,

Defendants.

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In this prisoner civil rights case, Defendants Lisson, Crowley, Evertt, Stirk, Blask and Lempke move, pursuant to Federal Rule of Civil Procedure 12(b)(1), to dismiss the official-capacity claims brought against them in the Plaintiff's amended complaint. See Docket No. 30. Specifically, the Defendants note that the official-capacity claims are barred by New York State's Eleventh Amendment immunity. The Plaintiff, represented by *pro bono* counsel, has informed the Court that he does not oppose the Defendants' motion. See Docket No. 32.

Because the Plaintiff seeks declaratory relief, compensatory damages, and punitive damages—but not injunctive relief—the moving Defendants' motion is granted. See, e.g., *Browdy v. Karpe*, 131 F. App'x 751, 752-53 (2d Cir. 2005) ("To the extent [plaintiff] sues defendants in their 'official capacity' as employees of . . . a state agency,

his §§ 1983, 1985, and 1986 claims for money damages are barred by the Eleventh Amendment."); *In re Deposit Ins. Agency*, 482 F.3d 612, 618 ("A plaintiff may avoid the Eleventh Amendment bar to suit and proceed against individual state officers, . . . in their official capacities, provided that his complaint (a) 'alleges an ongoing violation of federal law' and (b) 'seeks relief properly characterized as prospective.'") (quoting *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2007)); *Abdur-Raheem v. Selsky*, 598 F. Supp. 2d 367, 369 (W.D.N.Y. 2009) (observing that punitive-damages claim brought against a state official in his official capacity is barred by the Eleventh Amendment). The Plaintiff's official-capacity claims against Defendants Lisson, Crowley, Evertt, Stirk, Blask and Lempke are therefore dismissed.

By separate order, the Court will refer this case to a magistrate judge for further proceedings.

**SO ORDERED.**

Dated: October 11, 2018  
Buffalo, New York

S/Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE